UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 08-11770-GAO

AMELIA PETERS BINGHAM and STEVEN PETERS BINGHAM,
on behalf of themselves and on behalf of descendants of the
South Sea Indians who are similarly situated,
Plaintiffs

v.

COMMONWEALTH OF MASSACHUSETTS and TOWN OF MASHPEE,
Defendants.

OPINION AND ORDER
May 6, 2009

O'TOOLE, D.J.

This is a purported class action brought by Amelia Peters Bingham and her son, Steven Peters Bingham, "on behalf of themselves and on behalf of descendants of the South Sea Indians, who are similarly situated." (Am. Comp. 1) (emphasis omitted). Their claims have their distant origins in a deed executed December 11, 1665, which conveyed certain land to the "South Sea Indians: and theire Children for ever: and not to be sold or given away from them by any one: without all theire Consents there unto . . . ." (Pls.' Opp'n to Commonwealth of Mass.' Mot. to Dismiss Ex. A1.) In 1869, the Massachusetts General Court passed an act that released the deed's evident restraint on alienation, permitting the land to be divided and sold. See 1869 Mass. Acts 780.[1]

[1] In relevant part, the act stated:

> All lands heretofore known as Indian lands and rightfully held by an Indian in severalty, and all such lands which have been or may be set off to any Indian, shall be and become the property of such person and his heirs in fee simple . . . and all Indians shall hereafter have the same rights as other citizens to take, hold, convey, and transmit real property.

1869 Mass. Acts 780.

According to the plaintiffs, the 1869 release of the restraint on alienation and the subsequent incorporation of some of the land into the Town of Mashpee (the "Town") constituted an unconstitutional taking of land in violation of the Fifth Amendment by the Commonwealth of Massachusetts (the "Commonwealth") and the Town. The plaintiffs also claim violations of their rights under unspecified "federal common law and federal Indian policies." (Am. Comp. ¶ 26.) The plaintiffs seek to be compensated for the wrongful taking of the land and to be restored to immediate possession of the land. (Id. at 9.)

The defendants have each moved to dismiss the complaint. Because the plaintiffs have not shown that they have standing to bring the claims they assert, this Court lacks subject matter jurisdiction over the complaint and it must be dismissed.

The plaintiffs trace their claim to the 1665 deed. The deed can conceivably be read either as conveying the land to the South Sea Indian *tribe* collectively or to the individual *members* of the tribe existing at the time of the deed and their respective "children." In either case, the plaintiffs have not demonstrated a basis for their standing. If the deed is interpreted as having conveyed land to the South Sea Indian tribe, then only the tribe, and not individual members, such as the plaintiffs, has an enforceable property interest in the communal holding. In that case, suit on claims like those in the amended complaint would have to be brought by the tribe as an entity. If, on the other hand, the deed is interpreted to have conveyed land to individual ancestral members of the present South Sea Indians, then the plaintiffs would have to show that they have an inherited interest traceable through the generations from the seventeenth century to the twenty-first from particular individuals who took individual property rights as a consequence of the deed. The plaintiffs concede in the amended complaint that they are unable to show their interest in this specific way. (See id. ¶ 4) (acknowledging

that for many generations genealogical records regarding the Indians do not exist). Thus, the plaintiffs lack constitutional standing because absent a demonstrable property interest, they have suffered no "injury in fact" by any wrongful act of the defendants. See Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). The plaintiffs likewise lack so-called "prudential" standing because they improperly assert the rights of another, whether the tribe or unknown ancestors. See Latin Am. Music Co. v. Archdiocese of San Juan of the Roman Catholic & Apostolic Church, 499 F.3d 32, 46 (1st Cir. 2007).

A final point to be made is that the plaintiffs cannot make an end-run around the standing requirements by structuring this suit as a class action. Merely purporting to represent all "descendants of the South Sea Indians" does not mean that the plaintiffs represent the tribe or can assert the tribe's rights. See Simon v. E. Ky. Welfare Rights Org., 426 U.S. 26, 40 n.20 (1976) (noting that merely because "a suit may be a class action, however, adds nothing to the question of standing"); Canadian St. Regis Band of Mohawk Indians v. New York, 573 F. Supp. 1530, 1539 (N.D.N.Y. 1983) (explaining that "[n]or does banding together a group of individuals who lack standing confer that attribute upon the class or its representatives").

The motions to dismiss (dkt. nos. 10 & 12) are GRANTED. The complaint is DISMISSED.

It is SO ORDERED.

/s/ George A. O'Toole, Jr.
United States District Judge